

## **DECISION**

### **Dispute Codes:**

**Landlord:** OPR, MNR, MNDC, MNSD and FF  
**Tenant:** CNR, OLC, RP, and RR

### **Introduction**

These applications were brought by both the landlord and the tenant.

By application of June 21, 2010, the landlord seeks an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served in person on June 11, 2010. The landlord also seeks a Monetary Order for the unpaid rent, damage or loss under the legislation or rental agreement, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By application of June 17, 2010, the tenant seeks to have the Notice to End Tenancy set aside, orders that the landlord comply with the legislation or rental agreement and make repairs to the rental unit. The tenant also seeks a rent reduction in compensation for needed repairs.

### **Issues to be Decided**

The landlords' application requires decisions on whether the Notice to End Tenancy should be set aside or upheld, whether the landlord is entitled to a Monetary Order for unpaid rent and filing fee and authorization to retain the security deposit.

The tenant's application requires a decision on the validity of the Notice to End Tenancy, and whether the orders requested are warranted.

## **Background and Evidence**

This tenancy began on April 3, 2010. Rent is \$950 per month and the landlord holds a security deposit of \$475 paid on or about April 1, 2010 and \$100 of a pet damage deposit, of which the balance remains outstanding.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant had failed to pay the full rent for June 2010. The parties concurred that a shortfall of \$414 remains unpaid for June and, in the interim, the tenant has paid no rent for July.

The tenant made explanation that she had not paid the rent due to deficiencies in the rental unit including the presence of mold and the absence of working smoke detectors among other matters, all contested by the landlord.

## **Analysis**

Section 26(1) of the *Act* states that:

“A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

Therefore, the deficiencies claimed by the tenant cannot change the effect of the Notice to End Tenancy for unpaid rent.

Section 46 of the Act states that, if rent is not paid, a landlord may end the tenancy by issuing a 10-day Notice to End Tenancy on any day after the rent is due. The tenant may nullify the notice by paying the overdue rent within five days of receipt of the Notice. In this instance, I find that the rent remained unpaid to the time of the hearing.

Accordingly, I find that the Notice to End Tenancy is valid and lawful and that the landlord is entitled to an Order of Possession effective two days from service of it on the tenant.

I further find that, including recovery of the filing fee and authorization to retain the security deposit and pet damage deposit in set off, which I award under section 72 of the *Act*, the tenant owes the landlord an amount calculated as follows:

June rent shortfall	\$ 414.00
July rent	950.00
Filing fee	50.00
Subtotal	\$1,414.00
Less retained security deposit	- 475.00
Less interest (September 15, 2008 to date)	- 100.00
<b>TOTAL</b>	<b>\$ 839.00</b>

As to the tenant's claims, I find that as the end of the tenancy is imminent, the requested orders for landlord compliance and repairs are moot. As the parties gave conflicting evidence as to whether the need for repairs minimized the value of the tenancy, I am unable to find conclusively that the tenant is entitled to a rent rebate. Therefore, the tenant's application is dismissed without leave to reapply.

## **Conclusion**

The landlords' copy of this decision is accompanied by:

1. An Order of Possession, enforceable through the Supreme Court of British Columbia, effective two days from service of it on the tenant.
2. In addition to authorization to retain the security and pet damage deposits in set off, a Monetary Order for \$839.00, enforceable through the Provincial Court of British Columbia, for service on the tenant.

The tenants' application is dismissed without leave to reapply.

July 20, 2010